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Termination of Parental Rights (TPR)

05/07/2003

In Re E.T., 787 N.E.2d 483 (Ind. Ct. App. 2003) affirmed in part and vacated in part by 808 N.E.2d 639 (Ind. 2004).

In **In Re E.T.**, 787 N.E.2d 483 (Ind. Ct. App. 2003), the Court affirmed the trial court's judgment terminating parental rights, holding that reports of home visits and supervised visitation were admissible under the business records hearsay exception and that the admission of these reports did not violate the parents' constitutional right to confront witnesses against them. The parents' two children were removed from their custody by the Allen County Office of Family and Children (ACOFC) after the children were found wandering from their home. For approximately three years, the ACOFC worked with the parents to reunify them with their children. These reunification efforts failed, however, and the ACOFC filed a petition to involuntarily terminate parental rights. The original CHINS disposition had ordered the parents to participate in home based services and supervised visitation. The agency administering the home based services kept reports describing all home visits and supervised visitations. The ACOFC introduced these reports into evidence during the termination proceedings, and the trial court admitted them pursuant to the business records hearsay exception found in Ind. Evidence Rule 803(6). The parents objected to the admission of these reports, claiming they were hearsay and did not fit into the business records exception.

Standard of Review. The admission or exclusion of documentary evidence rests within the discretion of the trial court. Id. at 485 (quoting Carter v. Knox County Office of Family and Children, 761 N.E.2d 431, 437 (Ind. Ct. App. 2001)). A proper foundation must be laid, and if the trial court is satisfied as to the document's validity, such evidence may be admitted. Id. The trial court's ruling will not be disturbed absent an abuse of discretion. Id. An abuse of discretion occurs when a decision is clearly against the logic and effect of the facts and circumstances before the court. Id.

The reports that described the home visits and supervised visitations were admissible documentary evidence pursuant to the business records exception to the hearsay rule. The ACOFC offered the reports into evidence during the testimony of the supervisor of the home based counseling agency. She testified that the reports were made by her staff members in the regular course of business, based upon their first-hand observation of the home visits and supervised visitations. The reports were made after each visit was completed, and the each report was reviewed and initialed by the supervisor before it was sent on to the ACOFC. The parents objected to the admission of

the reports, contending that they were more comparable to police investigative reports, which are excluded from the business records exception to the hearsay rule.

The Court began by noting that the business records exception to the hearsay rule permits admission of regularly conducted business activity provided that certain requirements are met. The exception applies if “the . . . report . . . of acts, events, conditions, opinions, or diagnoses (is) made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of regularly conducted business activity, and if it was the regular practice of that business activity to make the . . . report . . . as shown by the testimony . . . of the custodian or other qualified witness, unless the source of information or the method or circumstances . . . indicate a lack of trustworthiness.” Evid. R. 803(6). While the hearsay rule is designed to forbid the admission of unreliable out of court statements offered to prove the truth of the matter asserted, the business records exception permits records of business activity to be admitted in circumstances when the recorded information will be trustworthy. *Id.* at 486 (quoting *Stahl v. State*, 686 N.E.2d 89, 92 (Ind. 1997)). The reliability of these records “stems from the fact that the organization depends on them to operate, from the sense that they are subject to review, audit, or internal checks, from the precision engendered by the repetition, and from the fact that the person furnishing the information has a duty to do it correctly.” *Id.* The Court noted that police reports are excluded from the hearsay exception because witness statements taken by police officers are not given in the usual course of the *witness’* business. *Id.* at 486 (quoting *Payne v. State*, 685 N.E.2d 635, 636 n.20 (Ind. Ct. App. 1995)). In this case, however, the visitation reports met the requirements of Evid. R. 803(6) for admission as business records. Although the makers of the records did not testify in court, the records contained first hand impressions of events which they had a duty to observe and upon which they had a duty to report. The reports were made contemporaneously with or soon after the events that were reported. Finally, the reports were kept in the course of the service provider’s regular business. Although the reports were admissible under the business records exception to the hearsay rule, the Court emphasized its preference that in cases like these (where the results can be permanent and irrevocable), the caseworkers themselves should be called as witnesses instead of relying upon their written reports.

The trial court’s admission of the reports describing home visits and supervised visitation did not violate the parents’ federal and state constitutional rights to confront witnesses against them. The parents contended that their constitutional right to confront witnesses against them was violated when the trial court admitted the reports concerning the home visits and the supervised visitation. The Court disagreed. While some statements may constitute hearsay, they don’t offend the right of confrontation where they possess substantial indicia of reliability, which may be inferred where the evidence falls within a firmly rooted exception to the hearsay rule. *Id.* at 487 (quoting *Hernandez v. State*, 716 N.E.2d 601, 602 (Ind. Ct. App. 1999)). Additionally, if the statement falls within such an exception, an inference arises that the rights to confrontation and cross-examination are not violated. *Id.* Because the Court determined that the reports fell within the “firmly rooted” business records exception to the hearsay rule, the parents did not suffer a constitutional deprivation in this case.